U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: SRC 02 217 50319 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a new U.S. office engaging in the purchasing and distribution of laboratory equipment and chemical products. The petitioner was incorporated in the State of Florida in June 2002. It seeks to employ the beneficiary as a sales manager and jewelry specialist.[1] Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition, concluding that the requirements for an L-1 visa in connection with a new office have not been met since the petitioner failed to show that sufficient physical premises to house the new office have been secured at the time the petition was filed.

On appeal, counsel for the petitioner argues that since the petitioner had submitted, in response to the director's request for further evidence, a lease agreement for the new office that became effective ten days after the date the petition was filed, the petitioner has met the evidentiary requirement upon which the director's denial is based.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
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> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
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> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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[1] The AAO notes that the record does not contain page 2 of the petitioner's Form I-129. Thus, the above characterization of the petitioner's business and the beneficiary's intended employment is based on information provided elsewhere in the record.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

At issue in this proceeding is whether sufficient physical premises to house the new office had been secured at the time the petition was filed.

The petitioner initially did not submit any documentation relating to the physical premises for the new U.S. office. On July 12, 2002, the director requested a copy of the lease agreement for the office of the petitioner. In response to that request, the petitioner provided a copy of a lease agreement dated July 19, 2002, between the petitioner and HQ Global Workplaces, Inc., for office space at 801 Brickell Ave., Suite 900, Miami, FL 33131, with an unspecified lease term.

The director denied the petition on the grounds that adequate physical premises to house the new office had not been secured at the time the petition was filed since the petition was filed on July 9, 2002, and the office space housing the petitioner was not procured until July 19, 2002.

On appeal, counsel for the petitioner asserts that because the petitioner did submit a lease agreement in response to the director's request for further evidence, the petitioner has met the regulatory requirement relating to physical premises for new U.S. offices.[2]

Counsel's argument on appeal is not persuasive. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In this case, the evidence does not indicate that arrangements for the physical premises to

[2] The AAO notes that counsel's reference to 8 C.F.R. § 214.2(l)(2)(vi)(A) on the Notice of Appeal is incorrect. The relevant regulatory provision is set forth at 8 C.F.R. § 214.2(l)(3)(v)(A).

house the new office were in place at the time the petitioner filed the petition on July 9, 2002. Therefore, the director is correct in concluding that all requirements for a new office were not met when the petition was filed, and the petition cannot be approved.

A related issue not addressed by the director is whether the petitioner has established that the physical premises it had secured belatedly would have been sufficient to house the new office. The petitioner had not described its anticipated space requirements for its business, and the lease in question does not specify the amount or type of space secured. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. For this additional reason, the petition cannot be approved.

Beyond the decision of the director, the record is insufficient to establish that the beneficiary has been employed by the overseas entity in an executive or managerial capacity, or that the proposed employment with the U.S. entity would involve executive or managerial authority over the new operation, as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner did not submit with the petition any description of the beneficiary's job duties while under employment by the overseas entity. The record does include a copy of the beneficiary's resume indicating that the beneficiary has been a "sales sub manager" for the overseas entity since 2001; a letter from the general manager of the overseas entity confirming that the beneficiary was an "assistant manager" since 2001; and an untranslated copy of the overseas entity's organization chart, which does list the beneficiary's name among the staff. However, none of these documents enumerate or explain in any detail the beneficiary's job duties at the overseas entity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Similarly, the record is devoid of any information regarding the position the beneficiary is expected to assume with respect to the new U.S. office, or the proposed staffing of that office. Overall, the present record does not support a conclusion that the beneficiary has been employed by the overseas entity in an executive or managerial capacity, or that the proposed employment with the U.S. entity would involve executive or managerial authority over the new operation.

Moreover, the record is insufficient to establish that within one year of the approval of the petition, the intended United States operation would support an executive or managerial position as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The record contains no information pertaining to the proposed scope of the United States entity, its organizational structure, or its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(1). Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2), the petitioner is also required to submit information regarding the overseas entity's financial ability to remunerate the beneficiary and to commence doing business in the United States. The AAO is unable to determine the financial status of the foreign entity in this case, as much of the financial data relating to the foreign entity that the petitioner submitted has not been translated into English. *See* 8 C.F.R. § 103.2(b)(3). The record also lacks any information with respect to the beneficiary's anticipated remuneration in the United States, or other projected costs of operating the new office or commencing business in the United States. As such, the documentation provided by the petitioner is ineffective in establishing the financial ability of the foreign company to do business in the United States, or to demonstrate that within one year of the approval of the petition, the intended United States operation would support an executive or managerial position. Again, the petition cannot be approved for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.